IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 88 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
NAVDEEP INVESTMENT(P) LTD. - Respondent(s)

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Appearance :
MR TANVISH U BHATT for Applicant(s) : 1,
NOTICE SERVED for Respondent(s) : 1,

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HONOURABLE MR.JUSTICE D.A.MEHTA

CORAM :

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 19/01/2006

ORAL JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1 The Income Tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following questions under section 256(1) of the Income Tax Act,1961 (the Act) at the instance of the Commissioner of Income Tax.

> *"(1) Whether, the Appellate Tribunal is right in law in upholding the claim of the assessee that the investment in shares is business income and therefore interest on that investment would go under business income?*
>
> *(2)Whether, the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to allow deduction under section 80M from the gross amount of dividend earned ?"*

2 The Assessment Year is 1985-86 and the relevant accounting period is 31/05/1985. Heard Mr. T.U.Bhatt, learned Standing Counsel on behalf of the applicant-revenue. Though served there is no appearance on behalf of the respondent-assessee.

3 Mr.Bhatt has drawn attention to the order of the Tribunal to point out that the Tribunal had followed its earlier decision in assessee's own case for Assessment Years 1981-82 and 1983-84. Mr.Bhatt has very fairly submitted that the revenue had carried the aforesaid decision before this Court by way of Income Tax Reference No. 36 of 1990 and Income Tax Reference No.38 of 1992(*Commissioner of Income Tax Vs. Navdeep Investment Pvt.Ltd.*) respectively. That this Court by an order dated 29/03/2003 passed in Income Tax Reference No.36 of 1990 had answered the question in favour of the assessee and against the

revenue. The aforesaid decision had been followed in Income Tax Reference No. 38 of 1992 by an order dated 4/9/2003. In the circumstances, it is not necessary to set out the facts and contentions in detail.

4 Applying the ratio of the aforesaid decision to the facts of this case, the questions referred are answered in the affirmative i.e. in favour of the assessee and against the revenue.

5 The reference is disposed of accordingly with no order as to costs.

Sd/- Sd/-
(D.A.Mehta, J) (H.N.Devani, J)

m.m.bhatt